



**ENVIRONMENTAL PROTECTION AGENCY**

**6560-50-P**

**40 CFR Part 228**

**[EPA-R06-OW-2015-0121; FRL-9929-30-Region 6]**

**Ocean Dumping: Proposed Modification of Final Site Designation**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency EPA proposes to modify the use restrictions of the Galveston, TX Dredged Material Site, Freeport Harbor, TX, New Work (45 Foot Project), Freeport Harbor, TX, Maintenance (45 Foot Project), Matagorda Ship Channel, TX, Corpus Christi Ship Channel, TX, Port Mansfield, TX, Brazos Island Harbor, TX and Brazos Island Harbor (42-Foot Project), TX Ocean Dredged Material Disposal Sites (ODMDSs) located in the Gulf of Mexico offshore of Galveston, Freeport, Matagorda, Corpus Christi, Port Mansfield and Brownsville, Texas, respectively. These sites are EPA designated ocean dumping sites for the disposal of suitable dredged material. This proposed action is being taken because there are current restrictions in place with language that prevent disposal of suitable dredged material from locations other than the federal channels. The United States Army Corps of Engineers Galveston District has requested EPA amend the restrictions to allow disposal of suitable dredged material from the vicinity of federal navigation channels to alleviate pressure on the capacity of their upland dredged material placement areas, when necessary.

**DATES:** *Comments.* Comments on this proposed rule must be received on or before **[Insert date 45 days from date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OW-2015-0121, by one of the following methods:

Federal e-Rulemaking Portal: <http://www.regulations.gov>; follow the online instruction for submitting comments.

- E-mail: Dr. Jessica Franks at [franks.jessica@epa.gov](mailto:franks.jessica@epa.gov).
- Fax: Dr. Jessica Franks, Marine and Coastal Section (6WQ-EC) at fax number 214-665-6689.
- Mail: Dr. Jessica Franks, Marine and Coastal Section (6WQ-EC), Environmental Protection Agency, Mailcode: (6WQ-EC), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

*Instructions:* Direct your comments to Docket No. EPA-R06-OW-2015-0121. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed

in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Marine and Coastal Section (6WQ-EC), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

**FOR FURTHER INFORMATION CONTACT:** Jessica Franks, PhD, Marine and Coastal Section (6WQ-EC), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700,

Dallas, Texas 75202-2733, telephone (214) 665-8335, fax number (214) 665-6689; e-mail address [franks.jessica@epa.gov](mailto:franks.jessica@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Table of Contents:**

A. Potentially Affected Persons

B. Background

C. Proposed Action

D. Administrative Review

Executive Order 12886

Paperwork Reduction Act

Regulatory flexibility Act, as Amended by the Small Business Regulatory Enforcement

Fairness Act of 1996

Unfunded Mandates

Executive Order 13132: Federalism

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

Executive Order 13211: Actions That Significantly Affect Energy Supply, distribution, or

Use Compliance with Administrative Procedure Act

National Technology Transfer Advancement Act

Executive Order 12898: Federal Actions to Address Environmental Justice in Minority

Populations and Low Income Populations

List of subjects in 40 CFR Part 228

Part 228 – (AMENDED)

## A. Potentially Affected Persons

Persons potentially affected by this action include those who seek or might seek permits or approval by EPA to dispose of dredged material into ocean waters pursuant to the Marine Protection Research and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* EPA's action would be relevant to persons, including organizations and government bodies seeking to dispose of dredged material in ocean waters offshore of Galveston, Freeport, Matagorda, Corpus Christi, Port Mansfield and Brownsville, Texas. Currently, the U.S. Army Corps of Engineers (Corps) and other persons with permits to use designated sites offshore of Galveston, Freeport, Matagorda, Corpus Christi, Port Mansfield, and Brownsville, Texas would be most impacted by this final action. Potentially affected categories and persons include:

| Category                                  | Examples of potentially regulated persons   |
|---|---|
| Federal government .....                  | USACE Civil Works and O & M projects; other Federal agencies, including the Department of Defense.  |
| Industry and general public ...           | Port authorities, marinas and harbors, shipyards and marine repair facilities, berth owners   |
| State, local and tribal governments ..... | Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects |

---

This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this action. For any questions regarding the applicability of this action to a particular entity, please refer to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## **B. Background**

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 et seq., gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. These proposed modification are being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR Chapter I, Subchapter H, Section 228.11) state that modifications in disposal site use which involve withdrawal of disposal sites from use or permanent changes in the total specified quantities or types of wastes permitted to be discharged to a specific disposal site will be made by promulgation in this Part 228. This site modification of types of wastes permitted to be discharged to a specific disposal site are being published as proposed rulemaking in accordance with § 228.11(a) of the Ocean Dumping Regulations, which permits changes in the total specified quantities or types of wastes permitted to be discharged to a specific disposal site based upon changed circumstances concerning use of the site.

### **C. Proposed Action**

The proposed modification of the use restrictions on the Galveston, TX Dredged Material Site, Freeport Harbor, TX, New Work (45 Foot Project), Freeport Harbor, TX, Maintenance (45 Foot Project), Matagorda Ship Channel, TX, Corpus Christi Ship Channel, TX, Port Mansfield, TX, Brazos Island Harbor, TX and Brazos Island Harbor (42-Foot Project), TX ODMDSs was requested by the US Army Corps of Engineers Galveston District in a March 27, 2015 letter.

The current wording within the 40CFR§228.15 restricts the use of these ODMDS to only dredged material originating from specific federal channel reaches associated with each ODMDS. For Freeport Harbor, TX, New Work (45 Foot Project) ODMDS and the Brazos Island Harbor (42-Foot Project), the ODMDSs are restricted to receive only construction dredged material from channel improvement projects at Freeport and Brazos Island Harbor, respectively. Modeling shows that future disposal capacity is limited at the placement areas typically used by the Galveston District when ocean disposal is not an option. As a result of these limitations, there is a need to change the use restrictions placed on these ODMDSs to include suitable dredged material from the greater vicinities of the respective federal channels. The proposed restriction modification will provide for sufficient future dredged material disposal capacity for material originating from dredging areas within each Federal channel and its vicinity. .

### **D. Administrative Review**

#### **1. Executive Order 12866**

Under Executive Order 12866 (58 FR 51735, October 4, 1993) EPA must determine whether the regulatory action is ‘significant,’ and therefore subject to office of Management and Budget

(OMB) review and other requirements of the Executive Order. The Order defines “significant regulatory action” as one that is likely to lead to a rule that may:

- (a) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;
- (b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- (d) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

This Proposed Rule should have minimal impact on State, local, or Tribal governments or communities. Consequently, EPA has determined that this Proposed Rule is not a “significant regulatory action” under the terms of Executive Order 12866.

## **2. Paperwork Reduction Act**

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and recordkeeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OMB. Since the Proposed Rule would not establish or modify any information or recordkeeping requirements, but only clarifies existing requirements, it is not subject to the provisions of the Paperwork Reduction Act.



### **3. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996**

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

This proposed rule will not impose any requirements on small entities. The modification of the Galveston, TX Dredged Material Site, Freeport Harbor, TX, New Work (45 Foot Project), Freeport Harbor, TX, Maintenance (45 Foot Project), Matagorda Ship Channel, TX, Corpus Christi Ship Channel, TX, Port Mansfield, TX, Brazos Island Harbor, TX and Brazos Island Harbor (42-Foot Project), TX ODMDSS broadens the use of the sites providing additional options for dredged material placement in the Galveston, Freeport, Matagorda, Corpus Christi, Port Mansfield and Brownsville, Texas vicinities.

For these reasons, the Regional Administrator certifies, pursuant to section 605(b) of the RFA, that the Proposed Rule will not have a significant economic impact on a substantial number of small entities.

### **4. Unfunded Mandates Reform Act**

This Proposed Rule contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) of 1995 (Pub. L. 104-4) for State, local, or

tribal governments or the private sector that may result in estimated costs of \$100 million or more in any year. It imposes no new enforceable duty on any State, local or tribal governments or the private sector nor does it contain any regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this Proposed Rule.

## **5. Executive Order 13132: Federalism**

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory *policies that have federalism implications*. “*Policies that have federalism implications*” are defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This Proposed Rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

## **6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments**

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable

process to ensure “meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.” This Final Rule does not have Tribal implications, as defined in Executive Order 13175.

## **7. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks**

This Executive Order (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This Proposed Rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

## **8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use Compliance with Administrative Procedure Act**

This Proposed Rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

## **9. National Technology Transfer Advancement Act**

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. This Proposed Rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

## **10. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations**

Executive Order 12898 (59 FR 7629) directs Federal agencies to determine whether the Proposed Rule would have a disproportionate adverse impact on minority or low-income population groups within the project area. The Proposed Rule would not significantly affect any low-income or minority population.

### **List of subjects in 40 CFR part 228**

Environmental protection, Water pollution control.

Dated: June 8, 2015.

**Ron Curry,**  
*Regional Administrator, Region 6.*

For the reasons stated in the preamble, EPA is proposing to amend 40 CFR part 228 as follows:

**PART 228— CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR  
OCEAN DUMPING**

1. The authority citation for part 228 continues to read as follows:

**Authority:**

33 U.S.C. 1412 and 1418

2. Section 228.15 is amended by revising paragraphs (j)(12)(vi), (j)(13)(vi), (j)(14)(vi), (j)(15)(vi), (j)(17)(vi), (j)(18)(vi), (j)(19)(vi), (j)(20)(vi) to read as follows:

**§ 228.15 Dumping sites designated on a final basis.**

\* \* \* \* \*

(j) \* \* \*

(12) \* \* \*

(vi) *Restrictions:* Disposal shall be limited to suitable dredged material from the greater Houston-Galveston, Texas vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

(13) \* \* \*

(vi) *Restrictions:* Disposal shall be limited to suitable dredged material from the greater Freeport, Texas vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

(14) \* \* \*

(vi) *Restrictions:* Disposal shall be limited to suitable dredged material from the greater Freeport, Texas vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

(15) \* \* \*

(vi) *Restrictions:* Disposal shall be limited to suitable dredged material from the greater Matagorda, Texas vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

(17) \* \* \*

(vi) *Restrictions:* Disposal shall be limited to suitable dredged material from the greater Corpus Christi, Texas vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

(18) \* \* \*

(vi) *Restrictions:* Disposal shall be limited to suitable dredged material from the greater Port Mansfield, Texas vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

(19) \* \* \*

(vi) *Restrictions:* Disposal shall be limited to suitable dredged material from the greater Brownsville, Texas vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

(20) \* \* \*

(vi) *Restrictions:* Disposal shall be limited to suitable dredged material from the greater Brownsville, Texas vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

\* \* \* \* \*

[FR Doc. 2015-15002 Filed: 6/17/2015 08:45 am; Publication Date: 6/18/2015]